IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1346 of 1987

Date of Decision: 24-6-2004

NEW INDIA ASSURANCE CO.LTD.

Versus

PREMLATTABEN SUKANRAJ CHOPDA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.Adv.S

for Mr.Adv.Rajni Mehta
For the Respondents 1-5 Mr.Adv.D.R.Bhatt
Respondent No.6 Mr.Adv.H.C.Patel

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Through this appeal, judgment of Motor Accident Claims Tribunal, Valsad Navsari in M.V.Claim Petition No.228 of 1984 dated February 19, 1987 has been challenged. Claimants are wife, children and parents of the deceased Shukanraj Kesharimalji Chopra who died in

the motor accident on February 14, 1984, between motor

Whether reporters of Local Papers may be allowed to see the Judgment?

tempo No.GTO 2612 and motor cycle No.GAT 6572. Allegation is that accident took place due to rash and negligent driving of the tempo. The deceased was partner in business viz. M/s Chopra Electrical with bright future. Insurance Company filed reply while driver / owner did not do so. Insurance company disputes allegation of negligence attributed to the owner / driver though accident is admitted. It is stated that accident was due to the fault of the deceased. On the pleadings of the parties, following issues were framed.

"1. Whether the applicants prove that the death of Shukanraj Kesharimalji Chopra was caused by rash and negligent act of opponent No.1 in driving Motor Tempo No.G.T.O. 2612 on 14.2.1984?

2. Whether the applicants are entitled for compensation ? If yes, what should be awarded as compensation ?

3. What award and against whom ?

Finding recorded by the Tribunal is that accident was caused by the rash and negligent driving of the tempo by its owner / driver. Accordingly, entitled to compensation of Rs.1.60 Lac with interest at the rate of 9 %. Aggrieved by this judgment, challenge through this appeal is at the instance of the insurance company. Well settled it is that insurance company cannot challenge the quantum of compensation and negligence under Section 149 [2] of the Motor Vehicle Act, 1988. Contention is that driver did not possess valid driving licence. Shri S.P.Parikh submits that application for summoning R.T.O., Valsad was filed before the M.A.C.T. but no order was passed as such, defence is prejudiced. Burden of showing that driver did not possess valid driving licence is on the insurance company. Unless it is discharged, it cannot escape liability. Frail routine defence has been taken in the written statement but no issue has been framed, nor such issue has been claimed when issues were being determined. Therefore, summoning of R.T.O. was not justified, as such, application has rightly been rejected. Therefore, result is, plea has not been raised before the M.A.C.T, so, it cannot be raised for the first time in this Court. Consequently, it is not proved that

driver did not possess valid driving licence at the time of accident. No other point is advanced for consideration by the Counsel for parties.

Therefore, there is no merit in this appeal and hence the same is dismissed with no order as to costs.

[Bhawani Singh]
Chief Justice

Date : 24.6.2004 [H.K.Rathod]
Judge

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